

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**A.G., a minor child; D.A., a minor child;)
A.L., a minor child; M.K., a minor child;)
and M.H., a minor child;)**

PLAINTIFFS,)

VS.)

**AUTAUGA COUNTY BOARD OF)
EDUCATION, et al.,)**

DEFENDANTS.)

CASE NO: 2:05-CV-1090-MEF

**B.H., a minor child, by and through his)
mother and next of friend, D.S.,)**

PLAINTIFFS,)

VS.)

**AUTAUGA COUNTY BOARD OF)
EDUCATION, et al.,)**

DEFENDANTS.)

CASE NO: 2:06-CV-0393-MEF

DEFENDANT'S FIRST MOTION IN LIMINE

COMES NOW Defendant Autauga County Board of Education and moves for an order in limine enforcing the subpoena on Defendant Terry Wright to attend trial and restricting the use of his deposition to contradicting or impeaching him. As grounds for this motion, the defendant shows as follows:

1. Defendant Autauga County Board of Education issued a subpoena for co-defendant Colonel Terry Wright to appear at trial.

2. Plaintiffs have submitted portions of the deposition transcript of Colonel Wright as part of their pre trial disclosures.

3. Colonel Wright is subject to this Court's subpoena powers since he is currently incarcerated in Limestone Correctional Facility.

4. Federal Rule of Civil Procedure 32(a)(3) states that the deposition of a witness may be used by any party for any purpose if the court finds:... (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;....

5. In Colonel Wright's case, his incarceration does not cause him to be unable to attend trial.

6. Colonel Wright's deposition testimony should not be allowed to be used at trial, unless it is used for contradicting or impeaching his live testimony, as allowed under Rule 32(a)(2).

WHEREFORE, PREMISES CONSIDERED, Defendant Autauga County Board of Education respectfully requests an order in limine enforcing the subpoena issued to Defendant Terry Wright.

Respectfully submitted,

s/Katherine C. Hortberg

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CERTIFICATE OF SERVICE

I hereby certify that I have on this **18th** day of **May, 2007**, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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